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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,438	01/23/2002	Daniel A. De Schryver	FR-7095	7949

7590

01/21/2004

Mr. John F. Sieberth  
SIBERTH & PATTY, L.L.C.  
2924 Brakley Drive  
Suite A-1  
Baton Rouge, LA 70816

EXAMINER

SZEKELY, PETER A

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/055,438

Applicant(s)

DE SCHRYVER ET AL.

Examiner

Peter Szekely

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-23, 32-35 and 40-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-23, 32-35 and 40-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-23, 32-35, 40-59, 62, 63 and 66-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. "No more than about" is indefinite. It has to be either "no more than" or "about", not both. See *Amgen, Inc. v. Chugai Pharmaceutical Co. Ltd.*, 18 USPQ2d 1016, (Fed. Cir.1991).

### *Specification*

4. The disclosure is objected to because of the following: In paragraph 0016, references are made to various claims, some of them already canceled. This is improper, since the final numbering of the claims and the number of allowed claims is not known at this time.

Appropriate correction is required.

### *Claim Objections*

5. Claims 83 and 84 are objected to because of the following informalities: the phrase "as set forth in this application as filed" is objectionable since it is not known whether claims 64-67 would be allowed "as filed" if at all. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 60, 61, 64, 65, 68 and 69 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Fuhr et al. 5,021,488, Kyo et al. 4,171,330, Nakahashi et al. 5,543,452, Gareiss et al. 5,712,336, Ogo et al. 5,849,826, Tjahjadi et al. 5,863,974 or Chisolm et al. 6,300,405.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 60-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuhr et al. 5,021,488, Kyo et al. 4,171,330, Nakahashi et al. 5,543,452, Ogo et al. 5,849,826, Tjahjadi et al. 5,863,974 or Chisolm et al. 6,300,405, in view of Mathews et al. 4,187,113, Kinoshita et al. 5,824,394, Hecht et al. 4,338,243, Fry 4,387,167, Garrison, Jr. 4,708,980, Myszak, Jr. 5,409,980, Bryant et al. 5,936,021, Kamei et al. 5,874,176 or Basset et al. 6,235,837.

***Response to Arguments***

10. Applicant's arguments filed 12/12/03 have been fully considered but they are not persuasive. The cited references disclose all the ingredients claimed by applicants. The additive compositions existed prior to blending them with the polyester or the polyamide. The open language of the claims allows the presence of any additional component in any concentration. The rejections are maintained.

11. Claims 60-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Murtha et al. 4,001,182 or Kawahigashi et al. 5,656,371.

12. Claims 60-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murtha et al. or Kawahigashi et al. 5,656,371, in view of Fuhr et al. 5,021,488, Kyo et al. 4,171,330, Nakahashi et al. 5,543,452, Ogo et al. 5,849,826, Tjahjadi et al. 5,863,974, Chisolm et al. 6,300,405, Hecht et al. 4,338,243, Frye 4,387,167, Garrison, Jr. 4,708,980, Myszak, Jr. 5,409,980 or Bryant et al. 6,235,837.

13. Murtha et al. disclose polypropylene and bromine containing compound in the Abstract, flame retarding activities in column 2, lines 23-37, MFI of the polypropylene in column 6, lines 59-61 and column 7, lines 7-9, and zinc borate in column 8, line 52. See also claims 1-5. Kawahigashi et al. teach polypropylene and its MFI in column 3, lines 47-52, zinc borate in column 5, lines 7-10, halogenated flame retardants in column 5, lines 29-50 and blends of flame retardants in the paragraph overlapping columns 5 and 6. Applicants' claims are not novel. In the alternative, the secondary references, which have been discussed previously, reveal all the ingredients used by applicants, making their incorporation into applicants' compositions patently obvious.

14. Claims 1-6, 8-23, 32-35 and 40-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murtha et al. 4,001,182 or Itoh et al. 5,760,120, in view of Kawahigashi et al. 5,656,371, Fuhr et al. 5,021,488, Kyo et al. 4,171,330, Nakahashi et al. 5,543,452, Ogo et al. 5,849,826, Tjahjadi et al. 5,863,974, Chisolm et al. 6,300,405, Hecht et al. 4,338,243, Frye 4,387,167, Garrison, Jr. 4,708,980, Myszak, Jr. 5,409,980 or Bryant et al. 5,936.

15. Itoh et al. divulge bromine containing flame retardants in column 5, lines 24-51, polyamide, polyester, and their blend with polypropylene in column 8, lines 3-46, the MFR of polypropylene in column 8, lines 44-46 and zinc borate in column 10, line 9. Murtha et al., in addition to the features related in paragraph 13, claim that the flame retardant package they use is equally effective in polyamide and polyolefins. That makes the use of the fire retarding ingredients of Murtha et al. obvious to use in the blend of polyamide and polypropylene. The rest of the references have been discussed previously, and since they reveal every ingredient claimed by applicants, the incorporation of them into the compositions claimed by applicants is patently obvious.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.

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